IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:11-CR-357-4-BR No. 5:16-CV-270-BR

STEPHON DEVON SMITH,)	
Petitioner,)	
v.)	ORDER
UNITED STATES OF AMERICA,)	
Respondent.)	

This matter is before the court on the parties' supplemental briefs filed in response to the court's 27 August 2019 order. (DE ## 207, 212.) Petitioner contends that his conviction on Count 2 should be vacated and that he should be resentenced on Count 1. (DE # 207; see also DE # 146.) In light of <u>United States v. Davis</u>, 139 S. Ct. 2319 (2019), the government agrees. (DE # 212, at 2.)

Petitioner's 28 U.S.C. § 2255 motion, (DE # 146), is ALLOWED. The judgment entered 9 May 2012 and petitioner's conviction on Count 2 are VACATED. Count 2 is DISMISSED. The government's motion to dismiss (DE # 166) is DENIED as MOOT. Resentencing on Count 1 is SET for 28 October 2019. The U.S. Probation Office is DIRECTED to file a memorandum setting forth any revisions to the Presentence Report, (DE # 91).

This 10 September 2019.

Senior U.S. District Judge